No. 94-1837

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

BARNETT BANK OF MARION COUNTY, N.A.,

Petitioner,

v.

TOM GALLAGHER, INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, ET AL.,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF THE AMICI CURIAE AMERICAN BANKERS ASSOCIATION, ET AL., IN SUPPORT OF PETITIONER

JOHN J. GILL III
Counsel of Record
MICHAEL F. CROTTY
MATHEW H. STREET
AMERICAN BANKERS ASSOCIATION
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 663-5026
Attorneys for Amici Curiae

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*Complete list of sponsoring organizations and counsel appear on inside cover.

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208

JAMES T. MCINTYRE
THE MCNAIR LAW FIRM
1155 15th Street, N.W.
Washington, D.C. 20005
(202) 659-3900
Attorney for Association of Banks in Insurance

THOMAS H. RISTINE
ICE MILLER DONADIO & RYAN
One American Square
Indianapolis, IN 46282
(317) 236-2100
Attorney For Indiana Bankers Association

RICHARD M. WHITING
THE BANKERS ROUNDTABLE
805 15th Street, N.W.
Washington, D.C. 20005
(202) 289-4322

MARY E. ARCENEAUX
LOUISIANA BANKERS ASSOCIATION
P.O. Box 2871
Baton Rouge, LA 70802
(504) 387-3282

LEONARD J. RUBIN
BRACEWELL & PATTERSON
2000 K Street, N.W.
Washington, D.C. 20006
(202) 828-5800
Attorney for Independent Bankers Association of America

MCKINLEY W. DEAVER
B. CLINT GARDNER
MISSISSIPPI BANKERS ASSOCIATION
P.O. Box 37
Jackson, MS 39205
(601) 948-6366

GERALD M. NOONAN
CONNECTICUT BANKERS ASSOCIATION
450 Church Street
Hartford, CT 06103
(203) 527-5161

DAVID L. GLASS
NEW YORK STATE BANKERS ASSOCIATION
485 Lexington Avenue
New York NY 10017
(212) 949-1184

QUESTIONS PRESENTED

1. Whether a federal statute that gives a national bank operating in a town with a population not exceeding five thousand the right to sell insurance (12 U.S.C. § 92) preempts a state law that prohibits such a bank from selling insurance.

2. Whether a state law prohibiting banks from selling insurance is a law enacted "for the purpose of regulating the business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

3. Whether 12 U.S.C. Section 92 is an "Act [that] specifically relates to the business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Page

STATUTES:

LEGISLATIVE MATERIAL:

Page

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BRIEF OF THE AMICI CURIAE AMERICAN BANKERS ASSOCIATION, et al., IN SUPPORT OF PETITIONER

The American Bankers Association, et al., hereby respectfully submit this brief as amici curiae in support of the Petitioner in accordance with the provisions of Rule 37.2 of the Supreme Court Rules. All parties have consented to this filing, and their written consents are filed with this brief.

INTEREST OF THE AMICI CURIAE

The American Bankers Association, Association of Banks in Insurance, The Bankers Roundtable and the Independent Bankers Association of America are national trade associations of the commercial banking industry that, collectively, represent very nearly every banking institution in the country. All of the associations frequently appear in litigation on matters of concern to their respective members. The question of the extent to which banks may participate in an entire line of business specifically made available to them by statute self-evidently fits within the interests of the associations.

The Connecticut, Indiana, Louisiana, Mississippi and New York State Bankers Associations are trade associations for the commercial banking industry within their respective states. Each of them has appeared as amicus curiae in litigation over the insurance or annuity sales powers of commercial banks, either in this Court or in federal or state courts in their respective jurisdictions.

This is one of at least five cases[1] now pending before

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[1] The others include *Owensboro National Bank v. Stephens*, 44 F.3d 388 (6th Cir. 1994); *First Advantage Insurance v. Green*, 652 So. 2d 562 (La. Ct. App. 1995), *application for writ of certiorari or review denied*, No. 95-C-0820 (La., May 5, 1995), *petition for cert. filed*, 63 U.S.L.W. ___ (U.S. June 17, 1995) (No. 94-2130); *NBD Bank, N.A. v. Bennett*, 874 F. Supp. 927 (S.D. Ind. 1994), *appeal pending*, No. 95-1310 (7th Cir.); and *Shawmut Bank*

courts around the country that explore the extent of the powers, if any, of state insurance commissioners to limit the exercise of otherwise lawful authority of national banks. Under familiar precepts of Supremacy Clause law, a federal statute ordinarily preempts any contrary state law. But in most of these cases, insurance commissioners and/or their constituent insurance agent trade associations maintain that plenary authority to regulate insurance is preserved for the states by virtue of the McCarran-Ferguson Act, 15 U.S.C. § 1012. The McCarran-Ferguson Act provides that federal law does not invalidate, impair or supersede a state law enacted for the purpose of regulating the business of insurance unless the federal law in question specifically relates to the business of insurance.

Your amici, on behalf of their respective members, suggest that

(1) so-called "anti-affiliation" statutes, including the Florida statute at issue here, now in effect in a number of states, are **not** state laws enacted for the purpose of regulating the business of insurance, but rather are enacted to regulate or prohibit a portion of the business of banking;

(2) the federal law in question here can co-exist with, and therefore not "invalidate, impair or supersede," those state laws that--unlike the anti-affiliation statute in this case--really do regulate the business of insurance; and

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Connecticut, N.A. v. Googins, No. 3:94 CV 146 (RNC) (D. Conn.).

(3) the federal law in question here, 12 U.S.C. § 92, is a law that "specifically relates to," though it does not and need not "regulate," the business of insurance (It actually uses the word "insurance" five times). To the extent that Section 92 is inconsistent with state law, it is, therefore, entitled to preemptive effect.[2]

The Eleventh Circuit below got it wrong, and in doing so acted at odds with the great weight of precedent, both of this Court and of sister Circuits.

REASONS FOR GRANTING THE WRIT

I. The Conflicts Among the Circuits

The Petition for Writ of Certiorari filed in this case correctly points out that there is a "square conflict" between the decision of the Eleventh Circuit below and a contemporaneous decision by the Sixth Circuit, *Owensboro National Bank v. Stephens*, 44 F.3d 388 (6th Cir. 1994), a conflict in need of resolution by this Court so as to restore uniformity of interpretation and application of a federal

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[2] When it suits their purposes, the Florida Respondents actually agree that "under the Supremacy Clause, any Florida law in conflict with 12 U. S. C. § 92 would be preempted." **Answer Brief and Appendix of Appellees, State of Florida, Department of Insurance, and Florida Association of Insurance Agents, and Amicus Curiae Florida Association of Life Underwriters**, *Glendale Federal Savings and Loan Association v. State of Florida, Department of Insurance*, Case No. 88-2266 (Fla. App. 1st Dist.), January 13, 1989, at 29.

statute that is of increasing importance to the development of a modern financial structure in the United States. Your amici obviously concur in the argument set forth in the Petition, but appear here to carry the analysis a step further.

The Sixth Circuit opinion is only the most obvious instance in which other courts have reached results irreconcilable with that of the court below. In *Owensboro*, as here, a national bank alleged that Section 92 of the National Bank Act (12 U.S.C. § 92), which specifically grants to national banks located and doing business in small towns the affirmative statutory right to act as insurance agent, preempted a state anti-affiliation statute that prohibited banks from so acting. As here, the insurance commissioner claimed that the state law was saved from preemption by the McCarran-Ferguson Act. Nonetheless, the court held that the McCarran-Ferguson Act did not apply. It saved only those state laws enacted for the purpose of regulating the business of insurance, whereas the Kentucky law in question determined who could or could not engage in the business of insurance: "Excluding a person from participation in an activity, however, is different from regulating the manner in which the activity is conducted. The former is the regulation of the person; the latter is the regulation of the activity." *Owensboro*, *id.*, 44 F.3d at 392. Here, the Florida law in question says nothing about **how** Barnett Bank of Marion County's insurance agency activities are to be conducted. If the Commissioner has his way here, there will be no such activity to regulate at all. Nevertheless, the Eleventh Circuit below held that the Florida law excluding the Bank from the insurance agency business regulated "the business of insurance" because it regulated "the relationship between

insurers and potential policyholders." *Barnett Bank of Marion County v. Gallagher*, 43 F.3d 631 (11th Cir. 1995) (Pet. App. A, at 11a).

Besides the Sixth Circuit, the Third, Fourth, Fifth, Eighth, and Ninth federal circuits all take a different view from the court below:

○ In *United Services Automobile Association v. Muir*, 792 F.2d 356 (3d Cir. 1986), *cert. denied*, 479 U.S. 1031 (1987), a nationwide insurance underwriter acquired a savings bank in Texas. As a result, the Insurance Commissioner of Pennsylvania sought to compel either a divestiture of the savings bank or a revocation of the company's license to do business in Pennsylvania. Section 641 of the Pennsylvania Insurance Department Act (40 P.S. § 281) prohibited affiliations between insurance companies and financial institutions. USAA filed suit challenging the Commissioner's actions. The district court abstained, concluding that the McCarran-Ferguson Act gave states exclusive control over regulation of the business of insurance.

On appeal, the Third Circuit reversed. Despite the fact that the Pennsylvania anti-affiliation statute was located in the insurance code, as is the Florida law, the court found that the purpose of the legislature was not to regulate the business of insurance, but rather "to prevent competition between insurers and Pennsylvania financial institutions."

Id. at 364. Moreover, applying the Supreme Court's *Pireno*[3] test, the court found that the Pennsylvania law was not concerned with the transferring or spreading of the policyholder's risk; that affiliations between insurers and banks had no integral connection to the relationship between the insurer and the insured; that the reach of the McCarran-Ferguson Act was limited to entities within the insurance industry; and that banks were not within that industry--even those that were affiliated with insurance companies. *Id.* Consequently, the court found that the McCarran-Ferguson Act did not apply.

The relevant Florida statute here is substantively identical to the Pennsylvania statute but the Eleventh Circuit found its purpose to be the protection of consumers from "the loss of arms-length transactions and objectivity when the bank becomes involved with insurer and insured."[4] *Barnett*, *id.* 43 F.3d at 636 (Pet. App. A, at 12a).

○ In *Tri-State Machine, Inc. v. Nationwide Life Insurance Co.*, 33 F.3d 309 (4th Cir. 1994), the court dealt with an ERISA preemption issue. Like the McCarran-Ferguson Act, the Employee Retirement Income Security Act

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[3] *Union Labor Life Insurance Co. v. Pireno*, 458 U.S. 119, 129 (1982).

[4] This despite the fact that impartial surveys show that banks have better sales practices than insurers. *See* Scism, *Many Life Insurance Agents Don't Know Enough About Their Clients, Study Says*, Wall Street Journal, May 9, 1995 at B12.

saves from preemption (by ERISA) state laws that regulate the business of insurance. The West Virginia Unfair Trade Practices Act, found in the Insurance chapter of the state code, proclaimed that its purpose was to regulate the business of insurance within the meaning of the McCarran-Ferguson Act, so as to escape federal preemption. The Florida law is to virtually identical effect. *See* **Fla. Stat. ch. 626.951(1)**. The West Virginia law set forth a "list of prohibited acts in the marketing, selling and administering of insurance in West Virginia." *Tri-State*, 33 F.3d at 314. Nevertheless, the Fourth Circuit held that the Act did not regulate the business of insurance and was not saved from preemption:

> [T]his type of regulation is not unique to the business of insurance, and it does not target, at least in these provisions, the core business of insurance which involves contracts of protection under which risk is spread among policy holders. *Id.*

Here, Barnett Bank of Marion County, through its subsidiary Linda Clifford Agency, acts as an insurance agent, not an underwriter. It does not itself enter into any contracts of protection under which risk is spread among policy holders. Those contracts are entered into, if at all, between policy holders and insurance **companies**.[5] Thus,

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[5] An insurance *agent* is not a party to the relationship between an insurance *company* and a policyholder. The agent merely serves to bring those two parties together, much as a real estate agent or a securities broker bring buyers and sellers together without becoming a principal.

Barnett Bank of Marion County is not and will not be engaged in the "core business of insurance," the regulation of which is the only thing preserved from federal preemption according to the Fourth--but not the Eleventh--Circuit.

○ In *Cochran v. Paco, Inc.*, 606 F.2d 460 (5th Cir. 1979), the federal Truth in Lending Act was found to be applicable to the activities of a company licensed by the Georgia Insurance Commissioner to finance premiums for purchasers of automobile insurance. Despite licensing and regulation of the company by an insurance commissioner and despite the company's capacity to cancel an insurance policy upon default by the borrower-policyholder, Georgia's laws concerning the company's operations were held not to constitute the regulation of the business of insurance within the meaning of the McCarran-Ferguson Act, and were therefor supplanted by the federal Truth in Lending Act:

In another context, the Supreme Court has recognized a clear distinction between regulation **of** an established relationship and the regulation of the **formation** of such a relationship. (*See Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989) in which a statute granting equal rights to all citizens to make and enforce contracts was held not to supply a cause of action to persons who, **after** making a contract of employment, were allegedly subjected to racial harassment on the job.). Florida's law attempts to regulate the formation of a relationship between a policyholder and an insurance company, arranged by the agent. It does not seek to regulate the relationship between the principals. It is the latter that would be neces[illegible]ry to make the statute one "regulating the business of insurance."

> Premium financing has little--if any--effect on an insurance company's ability to pay claims or on the nature of the policies it issues. Further, the activity could effect a policy's enforceability only in terms of whether a policy was in effect at a particular time, a question that might arise in the event of a payment error. Such a dispute, however, does not concern the details of the policy, its terms, or its coverage.

Cochran v. Paco, Inc., 606 F.2d at 466

The Fifth Circuit thus has a far more focused understanding and view of "regulation" of the "business of insurance" than is compatible with the Eleventh Circuit's free-floating and far ranging view of the same subject. As indicated above, the federal law authorizes--and Barnett Bank of Marion County will engage in--only insurance **agency** activities, not insurance underwriting. An insurance **agent** can only sell that which an insurance **company** issues. The insurance **company** is engaged in the business of insurance; an **agent** is not necessarily so engaged. An **agent** lacks the capacity to affect the ability of the **company** to pay claims, affect the policy's enforceability or dictate the details, terms or coverage of the policy to the insurer or insured. Laws that purport to regulate (by prohibiting) the participation of an entity in the insurance **agency** business are not laws that regulate the business of insurance, and the McCarran-Ferguson Act does not apply by its own terms.

○ In *First National Bank of Eastern Arkansas v. Taylor*, 907 F.2d 775 (8th Cir.), *cert. denied*, 498 U.S. 972 (1990), the plaintiff national bank offered "debt cancellation

contracts" to its borrowers whereby, for a fee paid in advance, the bank agreed to cancel any unpaid balance due on a loan in the event of the borrower's death or disability. Likening the contracts to credit life insurance policies, the Arkansas Insurance Commissioner asserted jurisdiction to regulate the contracts. The court concluded that the bank's activities were authorized by the "incidental powers" clause of the National Bank Act, 12 U.S.C. Section 24(Seventh), which says absolutely nothing about the business of insurance. That being the case, the court went on to hold in favor of the national bank because "under the principle of federal preemption...states may neither prohibit nor unduly restrict their activities." *Id.* at 778. State laws regulating the business of insurance were not saved from preemption in this case because debt cancellation contracts, being within the incidental powers of national banks, "do not constitute 'the business of insurance' under the McCarran-Ferguson Act." *Id.* at 779. The court points out that "the McCarran-Ferguson Act was not directed at the activities of national banks," *id.* and indeed was not directed at any entity that, at the time of passage of the Act, "was not considered to be engaged in the insurance business" and was "not subject to state insurance laws." "Congress certainly did not intend the definition of 'business of insurance' to be broader than its commonly understood meaning." *Id.* (quoting *Group Life and Health Insurance Co. v. Royal Drug Co.*, 440 U.S. 205, 224-227 (1979)). No one would contend that, prior to the enactment of the McCarran-Ferguson Act, the Florida Insurance Commissioner would have had any authority to regulate or prohibit the lawful activities of national banks (such as the power to act as the agent in the sale of insurance granted in 1916 to national banks located and

doing business in small towns); the Eighth Circuit's decision holds that the McCarran-Ferguson Act was not designed to expand an insurance commissioner's powers in this respect. Yet that is precisely the effect the Eleventh Circuit decision will have if it is left unreviewed and unreversed. The views of these two circuits are entirely incompatible.

o *Merchants Home Delivery Service, Inc. v. Frank B. Hall & Co., Inc.*, 50 F.3d 1487 (9th Cir. 1995) reaffirms the continuing validity of the Fifth Circuit's *Cochran* opinion discussed above and of this Court's *Pireno* test for what does or does not constitute the "business of insurance" (even outside the anti-trust context) for McCarran-Ferguson Act purposes. *Merchants* added another element to the discussion, however. The court began by determining that at least some of challenged practices of the defendant involved the "business of insurance" and were therefore governed by state laws regulating the business of insurance within the meaning of the McCarran-Ferguson Act. The court also noted that the allegedly conflicting federal statute, the Racketeer Influenced and Corrupt Organizations Act ("RICO") did not "specifically relate" to insurance. For those practices that were part of the business of insurance, the court determined that there was still an additional hurdle to overcome before the conflicting federal law would be given no force and effect. The McCarran-Ferguson Act does not permit federal law to "invalidate, impair or supersede" contrary state law under certain circumstances, but where giving effect to federal law would **not**, in fact, invalidate, impair or supersede state law, then federal law will be applied. The court found that RICO was consistent with California insurance laws in substance; the fact that the

available remedies under RICO differed from the remedies available for violation of state law was not sufficient to justify a holding that California law would be invalidated, impaired or superseded if RICO applied. Consequently, the McCarran-Ferguson Act was held not to apply.

In this case, the mere authorization to a national bank located and doing business in a small town to engage in the insurance agency business, without more, does not invalidate, impair or supersede those provisions of Florida law that actually **do** regulate the "business of insurance" as opposed to "regulating" who may participate in the insurance agency business. Section 92 of the National Bank Act need not be--and has not been--construed to impair or supersede or preempt even-handedly applied licensing and regulatory laws of the states that do not frustrate, burden or impede the federal purpose behind that statute.

II. Conflicts with Governing Precedent of This Court

In addition to the conflicts created by the decision below with the federal circuit cases outlined above, the Eleventh Circuit has acted inconsistently with applicable recent precedent of this Court, and needs to be set straight.

The bulk of the circuit court cases cited above deal with the question whether a particular state law was enacted for the purpose of regulating the business of insurance. But there is a second prong to the McCarran-Ferguson Act as well. Even if a state law is found to regulate the business of insurance, it is still preempted by contrary federal law if the federal law "specifically relates" to the business of

insurance. 15 U.S.C. § 1012(b). The Supreme Court cases discussed below deal with that question and clearly show that Section 92 does "specifically relate" to the business of insurance and therefore preempts contrary state law. The Eleventh Circuit ignored Supreme Court precedent, and its decision is thus flawed and cannot stand.

The court below relied heavily upon a phrase in this Court's decision in *United States Department of the Treasury v. Fabe*, 113 S. Ct. 2202 (1993):

> [S]tate laws enacted "for the purpose of regulating the business of insurance" do not yield to conflicting federal statutes unless a federal statute specifically requires otherwise.

Id. at 2211 (emphasis added).[6]

But *Fabe* does not stand for the proposition for which

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[6] The McCarran-Ferguson Act actually says "specifically relates" rather than "specifically requires." The two words are not synonymous, nor are either of them synonymous with "regulate," though the Eleventh Circuit uses the words interchangeably. This passage in the *Fabe* opinion is dictum in any event because the parties in that case agreed that the federal statute in question did *not* specifically relate to the business of insurance. *Id.* at 2208. A recent unanimous opinion of this Court cautioned that there is a "need to distinguish an opinion's holding from its dicta." *U.S. National Bank of Oregon v. Independent Insurance Agents of America*, 113 S. Ct. 2173, 2186 n. 11 (1993). The Eleventh Circuit failed to heed that caution.

the court below cites it, as shown by a subsequent decision of this Court that found federal preemption in a McCarran-Ferguson context even where the federal statute involved was not an "insurance" law--and even where an internal inconsistency in the federal law arguably lent support to the state law's viability. In *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 114 S. Ct. 517 (1993), this Court considered whether provisions in the Employee Retirement Income Security Act ("ERISA") that related to fiduciary standards "governed an insurance company's conduct in relation to certain annuity contracts." *Id.* at 521. In confronting this issue, the Court first considered whether ERISA's fiduciary standards that related to pension fund "plan assets" governed in light of conflicting state law. *Id.* at 525. ERISA provides that a fiduciary acts solely for the benefit of the plan's participants and beneficiaries; state law, however, provides that an insurance company must consider other interests as well. *Id.* John Hancock argued that, because of the McCarran-Ferguson Act, the conflict must be resolved in favor of state law, because "Congress reserved to the States primary responsibility for regulation of the insurance industry." *Id.* This Court, however, found that ERISA should prevail:

> ERISA, both in general and in the guaranteed benefit policy provision in particular, obviously and specifically relates to the business of insurance. (citation omitted). Thus, the McCarran-Ferguson Act does not surrender regulation exclusively to the States so as to preclude the application of ERISA to an insurer's actions under a general account contract.

Id. at 525.

But ERISA is clearly a pension, labor and tax law. Its fiduciary standards are applicable generally, not specifically targeted at the "regulation of the business of insurance." In this case, Section 92 is clearly a banking law, as the court below held. As in *Hancock*, however, the characterization of the statute as something other than an "insurance" law should not preclude the court from finding that the law nonetheless "specifically relates" to insurance. A federal statute need not have "insurance" as its main thrust in order that it "specifically relate" to insurance. If that were so, then no federal statute would "specifically relate" to insurance: The McCarran-Ferguson Act decreed, as a matter of federal policy, that "regulation" of insurance would be left to the states; there will be no federal laws that "regulate" the business of insurance. In ERISA, as in Section 92, there are references to insurance and insurance products. That was all this Court needed to find, in *Hancock*, that the statute "obviously and specifically relates to the business of insurance." By way of contrast, in the statute in issue in *Fabe* there were no such references to insurance.

Additionally, relying on the "specifically requires" language that is in the *Fabe* majority opinion (but nowhere in the McCarran-Ferguson Act), the court below held that nothing in Section 92 specifically required the preemption of state laws.

In *Hancock*, this Court itself had a different analysis. It did not seek to determine if there was anything "specific"

in ERISA that "required" preemption of contrary state laws. Indeed, the Court took pains to point out that the statute itself was internally contradictory on that very point: On the one hand, 29 U.S.C. section 1144(a) provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." On the other hand, section 1144(b)(2)(A) provides that ERISA shall not "be construed to exempt or relieve any person from any law of any State which regulates insurance...."

That hardly constitutes the kind of "specific requirement" that the court below would impose upon Section 92 before giving it preemptive effect. And yet this Court, only six months after the *Fabe* decision, concluded that there was

> no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis. State law governing insurance generally is not displaced, but "*where [that] law stands as an obstacle to the accomplishment of the full purpose and objectives of Congress," federal preemption occurs*. (Emphasis added.) ...
>
> [D]ual regulation under ERISA and state law is not an impossibility[;] [m]any requirements are complementary, and in the case of a direct conflict, federal supremacy principles require that state law yield.

Id. at 526 (citations omitted).

It was grievous error for the Eleventh Circuit below

to have equated the words "regulate" and "relate." Doing so allowed the court to conclude that because Congress did not and could not have intended to **regulate** the business of insurance in 1916 when Section 92 was enacted, it must also be true that Section 92 could not **relate** to the business of insurance. Aside from the distinction between those two terms that is implicit in the *Hancock* decision, this Court has likewise made the distinction absolutely explicit in yet another recent decision, *Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031 (1992):

> The ordinary meaning of ["relating to"] is a broad one-- "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with,."...--and the words thus express a broad pre-emptive purpose....Petitioner contends that § 1305(a)(1) only preempts the States from actually prescribing rates, routes or services. This simply reads the words "relating to" out of the statute. Had the statute been designed to pre-empt state law in such a limited fashion, it would have forbidden the States to "**regulate** rates, routes and services."

Id. at 2037-2038 (emphasis in original, citations omitted.) (*See also Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 47 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983); *Central States, Southeast and Southwest Areas Health and Welfare Fund v. Neurobehavioral Associates*, P.A., 53 F.3d 172 (7th Cir. 1995)).

The court below was also wrong in failing to consider the fact that Congress specifically rejected proposed language in an earlier draft of the bill that became the McCarran-Ferguson Act that would, if enacted, have done what the court below says it did anyway. Both the House and Senate

versions of the legislation provided that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance or which imposes a fee or tax upon such business, unless such Act *specifically so provides.*" 91 CONG. REC. 488 (1945) (Senate) (emphasis added); id. 1085-94 (House). Had Congress enacted that language, a federal act would have to expressly *provide* that it invalidates, impairs, or supersedes state law in order to have preemptive effect. The conference committee, however, changed this language, and instead required that a federal law need only "*specifically relate to the business of insurance*" in order to "invalidate, impair or supersede" a state law. H.R. Rep. No. 213, 79th Cong., 1st Sess. 1 (1945) (conference report). Thus Congress expressly rejected the very formulation the court below imposed.

III. The Importance of the Issue

The Petition for Writ of Certiorari correctly points out that there are a considerable number of states, including some of the larger markets in the country, that have "anti-affiliation" statutes on their books, many or all of which could be asserted to deny to national banks the rights granted them by federal law. In and of itself, that consideration would make this case one of immense practical consequence to banking and commerce in the future. But there is an additional consideration as well. While the decision officially applies only to national banks, the fact of the matter is that approximately thirty-eight states have so-called "wild card" or "parity" statutes on their books, including some of the states that have anti-affiliation statutes as well. With a great many variations, these statutes generally authorize state-chartered banks to exercise the same powers that may be exercised by national banks within the state,

notwithstanding anything else in state banking laws.[7] In many states, therefore, a federal court decision to the effect that national banks located and doing business in small towns may not sell insurance over the objection of the state insurance commissioner is necessarily also a decision that state-chartered banks in small towns may not sell insurance, thus harming the business opportunities of those banks and their customers as well as the interests of national banks and their customers.

CONCLUSION

For all of the reasons set forth herein and in the Petition for Writ of Certiorari, the American Bankers Association et al., as amici curiae and on behalf of their members, respectfully urge the Court to grant the Petition.

Respectfully submitted,

John J. Gill III
Counsel of Record

Michael F. Crotty
Mathew H. Street

AMERICAN BANKERS ASSOCIATION
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036
(202) 663-5026

July 7, 1995

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[7] See Appendix to this brief for collection of citations.

APPENDIX

American Bankers Association
Office of the General Counsel
July 5, 1995

STATE ANTI-AFFILIATION AND WILD CARD STATUTES

State	Anti-Affiliation Statute	Wild Card Statute
Alaska		§ 06.01.020
Arizona		§ 6-184(2)
Arkansas	§ 23-64-203(b)	§ 23-32-701(16)
Colorado	§ 10-2-221(2)	§ 11-2-103(5)
Connecticut	§ 38a-775	
Florida	§ 626.988	§ 655.061
Georgia	§ 33-3-23(b)	§ 7-1-61(a)(1)
Hawaii		§ 403-47.1
Idaho		§ 26-1101(3)
Illinois		205 ILCS 5/5(11)
Indiana		§ 28-1-11-2.5 **(annuities only)**
Kansas		§ 9-1715
Kentucky	§ 287.030(4)	§ 287.020(3)
Louisiana	§§ 6:121B(2), 6:242(A)6	§§ 6:121(B)(1), 6:242(C)

State	Anti-Affiliation Statute	Wild Card Statute
Maine	Tit. 24-A, § 1514-A(2)	Tit. 9B, § 416
Maryland		§ 5-504 Fin Insts
Massachusetts	Ch. 175, § 174E	
Minnesota		§ 48.15 (Subd. 2)
Mississippi	§ 83-17-229	§ 81-5-1(10)
Missouri		§ 362.105(3)
Montana		§ 32-1-362
Nebraska	§ 44-392	
Nevada	§ 683A.110	§ 662.015(1)(f)
New Hampshire	§ 384:16-b(II)	§ 394-A:7
New Jersey	§ 17:3C-1	§§ 17:9A-24a, 17:9A-25(12)
New Mexico	§ 59A-12-10	§ 58-1-54
North Dakota		§ 6-03-38
Ohio	§ 3911.01	§ 1125.23
Oklahoma		Tit. 6 § 203(5)
Oregon		§ 707.340
Pennsylvania	Tit. 40, § 281	
Puerto Rico	Tit. 26, § 304	
Rhode Island	§ 27-3-47	
South Carolina		§ 34-1-110
South Dakota		§ 51A-2-14

State	Anti-Affiliation Statute	Wild Card Statute
Tennessee	§ 56-6-201	§ 45-2-601
Texas	Ins. Code. Art. 21.07-3 § 5(h)	§ 342-113(4) Civ. Stat.
Utah		§ 7-1-301(3)
Vermont	Tit. 8, § 4811	Tit. 8, § 606(a)(1)
Virginia		§ 6.1-5.1
Washington		§ 30.04.215
West Virginia	31A-8C-2(f)	§ 31A-3-2(a)(5)(B)
Wisconsin		§ 220.04(8)
Wyoming		§ 13-3-704